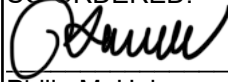


JONES DAY

250 VESEY STREET  
TELEPHONE

Plaintiffs are directed to respond to Defendant's letter (Doc. 71) by May 2, 2025 at 12:00 p.m.

SO ORDERED.



Philip M. Halpern  
United States District Judge

Dated: White Plains, New York  
April 30, 2025

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COM

VIA ECF  
Hon. Philip M. Halpern  
United States District Judge  
Southern District of New York  
300 Quarropas Street, Room 530  
White Plains, NY 10601

Re: *Burgard et al. v. Int'l Bus. Machs. Corp.*, No.: 7:24-CV-02885 (PMH)

Dear Judge Halpern:

On behalf of Defendant International Business Machines Corporation (“Defendant” or “IBM”), and pursuant to Rule 2(C) of Your Honor’s Individual Practices in Civil Cases, I write to request that the Court enter an order dismissing MaryBeth Acocella, Bernadette Ocampos Romero, and Ellen Rosner’s (“Unresponsive Plaintiffs”) Fair Labor Standards Act (“FLSA”) claims in this action, with prejudice, due to their failure to comply with the Court’s Order dated April 7, 2025 (Dkt. 68, docketed April 8, 2025).<sup>1</sup>

On April 4, 2025, the parties in this action filed a joint discovery letter, in which IBM requested the Court enter an order warning Unresponsive Plaintiffs that their failure to participate in discovery by April 15, 2025 will result in dismissal of their FLSA claims with prejudice. (Dkt. 67). On April 7, 2025, the Court issued an Order waiving any pre-motion conference requirement, exercising its discretion to deem the parties’ letter as a motion for sanctions under Federal Rules

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<sup>1</sup> Because the relief requested herein pertains to the Court’s April 7, 2025 Order granting IBM’s motion for sanctions under Federal Rules of Civil Procedure 37 and 41, IBM respectfully submits that no pre-motion conference is necessary under Rule 2(C) of Your Honor’s Individual Practices. Of course, should the Court deem a pre-motion conference appropriate, IBM will make itself available at the Court’s convenience.

JONES DAY

April 22, 2025  
Page 2

of Civil Procedure 37 and 41 and opposition thereto, and granting IBM's motion. (Dkt. 68). The Order provided that "the Opt-In Plaintiffs shall, by no later than April 15, 2025: (i) respond to Defendant's discovery demands, including serving interrogatory verifications and producing any responsive, non-privileged documents; and (ii) appear for depositions at a mutually agreeable date(s) and times." (*Id.*) The Court warned that the "[f]ailure to strictly comply with this Order will result in dismissal of the Opt-in Plaintiffs' Fair Labor Standards Act claims in this action with prejudice." (*Id.*).

All three Unresponsive Plaintiffs have failed to comply with the Court's Order. None of the Unresponsive Plaintiffs responded to IBM's discovery requests, nor made themselves available for depositions by April 15, 2025. Accordingly, IBM respectfully requests that the Court enter an order dismissing the three Unresponsive Plaintiffs from this action, with prejudice to their FLSA claims, in accordance with the Court's April 7, 2025 Order.<sup>2</sup>

Very truly yours,

/s/ Kristina A. Yost  
Kristina A. Yost

cc: All Counsel of Record (via ECF)

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<sup>2</sup> See, e.g., *Ruiz v. Citibank, N.A.*, 2014 WL 4635575 (S.D.N.Y. Aug. 19, 2014) (dismissing unresponsive opt-ins' claims with prejudice after court gave them a last chance to participate); *Gordon v. Kaleida Health*, 2013 WL 2250431 (W.D.N.Y. May 21, 2013) (similar); *Morangelli v. Chemed Corp.*, 2011 WL 7475 (E.D.N.Y. Jan. 1, 2011) (similar).